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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 392

CHARLES L. HARNEY CONSTRUCTION COMPANY
(FORMERLY PALM SPRINGS HOLDING CORPORATION),
Petitioner,

vs.

MAJOR GENERAL PHILIP B. FLEMING, INDIVIDUALLY AND AS ADMINISTRATOR, FEDERAL WORKS AGENCY, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

HAROLD LEVENTHAL,
DAVID B. GIDEON,
JOHN J. COURTNEY,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 392

CHARLES L. HARNEY CONSTRUCTION COMPANY
(FORMERLY PALM SPRINGS HOLDING CORPORATION),
Petitioner,

vs.

MAJOR GENERAL PHILIP B. FLEMING, INDIVIDUALLY AND AS ADMINISTRATOR, FEDERAL WORKS AGENCY, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioner, Charles L. Harney Construction Company (formerly Palm Springs Holding Corporation), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above-entitled cause.

Opinions Below

The opinion of the Court of Appeals (R. 49) is reported in — F. (2d) —. The District Court gave summary judg-

ment in favor of petitioner without rendering an opinion (R. 47).

Jurisdiction

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on July 18, 1949 (R. 57). The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

The principal questions presented by this case are:

1. Whether petitioner, a California corporation whose hotel taken by the Government in 1942, is precluded by its voluntary dissolution from exercising the right of a former owner, under Section 23 (d) of the Surplus Property Act, to repurchase real property at the price paid by the Government though below current value notwithstanding the provisions of Section 399 of the California Civil Code that a dissolved corporation shall continue in existence indefinitely for the purpose of realizing upon assets in its winding-up, and notwithstanding the rulings of the Superior Court of California that under Section 399 petitioner is in existence and has capacity under state law, and directing petitioner, to realize the value of its former owner right whether based solely upon the Surplus Property Act, as passed in 1944, or in the alternative upon the Act as amended in 1946.

2. Whether the court below gave due effect to the California law and decrees of the Superior Court of California in ruling that petitioner was not the person from whom the hotel was acquired by the Government, because of changes in its business and stockholders, and that its dissolution rendered it incapable of exercising the former owner's right under Section 23 (d) of the Surplus Property Act.

A subsidiary question is:

3. Whether Section 23 of the Surplus Property Act of 1944 applied to hotels prior to its amendment in 1946.

Statute Involved

The relevant statutory provisions are set forth in the Appendix.

Statement

Prior to June 22, 1942, the El Mirador Hotel was owned by petitioner then named the Palm Springs Holding Corporation, a California corporation. On June 22, 1942, the Government took the hotel from petitioner in condemnation proceedings, and paid $425,000.

Thereafter, there were transfers of the stock in petitioner corporation to the two principal stockholders, Warren B. Pinney and Ralph D. Lacoe, Jr. On October 1, 1942, they transferred the stock to Charles L. Harney, P. E. Harney, Henry F. Wrigley and C. J. Carroll. Thereafter, proceeding under California law, petitioner corporation amended its charter so as to change its name to Charles L. Harney Construction Company, its principal office from Los Angeles to San Francisco, and its business to a general contracting business. In 1945 petitioner corporation, having filed a certificate of election to dissolve, was dissolved pursuant to a certificate of dissolution dated June 28, 1945, and filed with the Secretary of State on August 4, 1945 (R. 27-29).

The hotel was acquired under the Declaration of Taking for permanent use as an Army hospital (later named the Torney General Hospital). But upon learning in January, 1946, that the Torney General Hospital was surplus to the needs of the Government, petitioner corporation notified the War Assets Administration that as former owner of the

hotel it intended to exercise its statutory right of repurchase. Section 23 of the Surplus Property Act of 1944, 58 Stat. 765, provides that the former owner of surplus real property shall have a preferential right to repurchase the property at the price paid him by the Government, subject to adjustments for increase or decrease in value resulting from action by the Government. By letter dated January 27, 1947, the War Assets Administration notified petitioner that since it had been dissolved it was no longer in existence and was therefore unable to exercise its repurchase priority (R. 7).

Petitioner, by letter dated March 13, 1947, called attention to the fact that under Sec. 399 of the California Civil Code, dissolution does not terminate the existence of a corporation. Section 399 provides that assets omitted from the winding "shall continue in the dissolved corporation." (R. 7.)

By letter dated April 1, 1947, the War Assets Administration stated the opinion that the statutory repurchase right was not an "asset" within meaning of Sec. 399, but further stated that additional consideration would be given to petitioner's priority right upon submission of "satisfactory evidence" that under California law, a dissolved corporation might acquire real property under the circumstances of this case. (R. 8.)

Petitioner filed a petition in the Superior Court of the State of California, pursuant to Sec. 403 of the California Civil Code. In California corporations in winding up are under the surveillance of, and subject to the jurisdiction of, the Superior Court. Section 403 provides for petitions by the corporation and gives the Superior Court jurisdiction to order and adjudge as to the assets available for distribution in the case of a corporation previously dissolved. The petition recited the facts in the case and

prayed for an order authorizing petitioner to submit a repurchase claim as former owner of the property. (R. 8, 15-18.)

On June 3, 1947, the Superior Court granted the petition, and entered an order that petitioner is in continued existence, that the repurchase right as the former owner "constitutes an asset of the said corporation within the meaning of Sec. 399 of the California Civil Code," and that the corporation is authorized and directed to submit its claim as former owner and to offer the adjusted purchase price prescribed for the former owner, it being understood that such price is less than present market value. (R. 8, 18-20.)

Petitioner submitted this order, together with the like opinion of the Secretary of State of the State of California, as evidence of its authority to acquire the hotel property under California law. These were presented to the Federal Works Agency, which had been designated by the War Assets Administration as its disposal agent for disposition of this property. They were submitted together with a tender of $700,000, the sum set by the W. A. A. as the adjusted price to be paid by the former owner. (R. 4, 8.)

By letter dated August 20, 1947, the Acting Administrator of the Federal Works Agency advised petitioner that "as a matter of law" it was not eligible to exercise the repurchase priority of a former owner. That ruling was based upon two propositions: (1) Former owners of commercial properties such as hotels had no rights under the original Surplus Property Act, passed October 3, 1944—i. e., prior to the amendatory Act of August 7, 1946—because section 23(a) of the Act as originally passed defined "real property" to exclude "industrial plants, factories, or similar structures, and facilities." (2) Accordingly, there was no "asset" in existence at the time of petitioner's dissolu-

tion in August, 1945, and Section 399 of the California Civil Code is inapplicable. (R. 35-43.)

Petitioner filed a supplementary petition with the California Superior Court, advising the court of the F. W. A.'s August 20, 1947, ruling (R. 20-24.) The court entered a supplementary order authorizing petitioner to proceed to realize upon this asset, and stated that Section 399 of the California Civil Code was applicable whether petitioner's repurchase right as former owner "is based solely upon the Surplus Property Act of 1944 . . . or upon that Act as amended by the Act of August 7, 1946." (R. 24-25.)

Petitioner immediately advised respondents of this supplementary order and requested reconsideration of the administrative ruling. (R. 9.) By letter of February 2, 1948, respondent Fleming, advised of his adherence to the August 20, 1947, ruling. He stated that he had considered and rejected petitioner's suggestion that the California proceeding be reopened for participation by the Federal Works Agency. (R. 43-44.)

An agreement has been executed between Pinney, Lacoe and the other persons holding stock in petitioner corporation as of June 22, 1942 (the Pinney-Lacoe group, and the stockholders who acquired the stock on October 2, 1942 (the Harney group), agreeing that both groups of stockholders would share in the benefits derived from the exercise by petitioner corporation of its rights as former owner. Notification of this agreement was sent to respondents on July 28, 1947, prior to the ruling of August 20, 1947. (R. 44-45.)

On February 9, 1948, petitioner brought this action for declaratory judgment (R. 1) on two grounds: first, that the Surplus Property Act, as passed on October 3, 1944, did extend to the former owners of hotels; and second, that whether petitioner's right was based solely on the 1944 law,

or was based on the 1944 law as amended in 1946, petitioner was authorized by California law to realize on this asset. In granting petitioner's motion for summary judgment the District Court agreed with both contentions and issued the declaration which was prayed in the complaint (R. 11) declaring that petitioner is—

> • • • in possession of and eligible to exercise the right of a former owner, as provided by Section 23 of the Surplus Property Act of 1944, both as originally enacted and as amended • • •. (R. 47-48.)

The Circuit Court of Appeals reversed on the ground that the California law and the California court decrees as to the existence and capacity of petitioner corporation are not controlling; that section 23(d) of the Surplus Property Act can not be invoked by dissolved corporations; that petitioner is not the person from whom the hotel was acquired by the Government; that section 23 of the Surplus Property Act did not extend to commercial property such as hotels prior to its amendment in 1946, which was subsequent to petitioner's dissolution under State law, and that petitioner is not now in existence and thus has no capacity to exercise the right to repurchase as an asset. (R. 49.)

Specification of Errors to Be Urged

The Circuit Court of Appeals for the District of Columbia Circuit erred:

1. In holding that Section 23(d) of the Surplus Property Act, as passed in 1944 and as amended in 1945, can not be invoked by a dissolved corporation.

2. In failing to give due effect to the California law, and the decrees of the California Superior Court, with respect to the existence and legal capacities of petitioner corporation under section 399 of the California Civil Code.

3. In failing to apply the law of California (a) as to the effect of petitioner's change in name, business and shareholders, under which law petitioner's corporate identity has never been changed, and (b) as to the effect of petitioner's dissolution, under which law petitioner corporation has remained in existence, and has capacity to repurchase its hotel under section 23(d) of the Surplus Property Act.

4. In ruling that petitioner is not the person from whom the hotel was acquired by the Government.

5. In ruling that petitioner is not a corporation in being at the present time and is thus not capable of repurchasing the hotel property formerly owned by petitioner.

6. In ruling that the section 23 of the Surplus Property Act of 1944 did not apply to hotels as the Act was passed in 1944, and was not applicable to hotels prior to the 1946 amendment.

7. In failing to rule that the right to repurchase the hotel formerly owned by petitioner is an asset which petitioner can realize on, under California law and under the Surplus Property Act, both (a) upon the premise, which is correct, that the right applied to hotels under the Surplus Property Act as passed in 1944, and (b) even upon the alternative premise that the right as to hotels is based upon the act as amended in 1946.

8. In reversing the judgment of the District Court with instructions to dismiss the complaint.

Reasons for Granting the Writ

The central question in this case is the weight and effect to be accorded by a Federal court, in determining the ability of a dissolved corporation to invoke a Federal statute, to the State law and State court rulings on the capacity of a dissolved corporation of that State.

The sound doctrine is that whether voluntary dissolution of a corporation defeats its eligibility to invoke a Federal statute depends upon the effect of the dissolution under the corporation statutes of the State involved. *Chicago T. & T. Co.* v. *4136 Wilcox Bldg. Corp.*, 302 U. S. 120. If the State involved has, like most of the States, passed a "continued existence" statute which beneficiently continues the existence and relevant capacities of the dissolved corporation, Congress will not be deemed to have jettisoned the state continued existence statutes. The Federal statute may be invoked by the dissolved corporation continued in existence by the laws of the State of incorporation. *Lesnow Bros. Inc.* v. *United States*, 78 F. Supp. 829 (C. Cl.).

The court below decided that petitioner corporation, dissolved in California, could not exercise the right, provided by section 23(d) of the Surplus Property Act of 1944, of a natural or corporate person to repurchase surplus real property, acquired from such person by the Government during wartime, at the price originally paid by the Government, plus increases for improvements made by the Government.

The court below stated that the decision of the California court is not "in any way controlling" as to the application of a Federal statute. But the court did not appreciate the importance of appraising dissolved corporations, wherever encountered in the geography of the Federal system, according to the laws of the State of incorporation. For whether "dissolution" of a corporation is to be held to defeat its eligibility under Federal law must depend upon the meaning and effect of that dissolution under the State law. The decision below conflicts in principle with *Chicago T. & T. Co.* v. *4136 Wilcox Bldg. Corp.*, and *Lesnow Bros., Inc.* v. *United States, supra.* In view of the importance in our Federal system of maintaining a proper balance between the

spheres of Federal law and State law, of according due effect and credit to State law and State court decrees, whether in deciding statutory or non-statutory questions of law, the decision below should be reviewed by this Court.

The court below in essence approached this case from the premise of the statement in *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 259: "It is well settled that at common law and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution can not be distinguished from the death of a natural person in its effect."

But the holding of the *Oklahoma Gas* case recognized, even prior to *Erie Ry. Co.* v. *Tompkins*, 304 U. S. 64, the importance of giving full scope in the Federal courts to a state statute providing for the extended life and powers of a dissolved corporation, since that "concerns the fundamental law of the corporation enacted by the State which brought the corporation into being." *Oklahoma Gas Co.* v. *Oklahoma*, 273 U. S. 257, 260.

A corporation dissolving in California does so with full confidence that it can in no way be jeopardized in respect to realizing on its assets. The relevant California legislation (California Civil Code section 399) provides that a corporation which has voluntarily obtained dissolution by court order, nevertheless continues to exist for the purpose, *inter alia*, of realizing upon assets.

California's is one of the many continued existence statutes by which most if not all of the states have abandoned the old common law rule that dissolution of a corporation means its extinction and, frequently, its inability to realize upon assets ascertained after dissolution. Some states mitigate these harsh consequences, and extend corporate

life, for only a certain period of years, two, three or five. "Many states, including California, New York and Ohio have statutes directing that a dissolved corporation shall continue as an entity without time limit." Hornstein, *Voluntary Dissolution* 51 Yale L. J. 64, 71. California, in abandoning the common law rule in 1929, deliberately provided "for the continuation of corporate existence indefinitely" rather than a definite period, in order to minimize the harsh consequences of dissolution under the common law rule. See Ballantine, *California Corporation Laws* (1932 ed.) sec. 394, pp. 473-4. Assets not included in the winding up may be realized upon at any future time. *Bank of Alameda County* v. *McColgan,* 69 Cal. App. (2d) 464, 159 P. (2d) 31.

These continued existence state statutes are remedial and are given a liberal construction, *Hawkins* v. *Glenn,* 131 U. S. 319, 33. They have been consistently construed to mean that a corporation though already dissolved may acquire property where that is the way to realize upon an asset consisting of the right to purchase property at an advantageous price. The prohibition in these statutes against continuance in business is deemed not to prohibit such acquisitions and appurtenant obligations as are incident to realization upon assets, even though the premises cannot be used in carrying on the business. See Comment, 44 Michigan Law Review 823 (1946).

Thus the courts have held that a corporation, though previously dissolved, may under such continued existence statutes (1) repurchase lands by exercising a right of redemption from a judgment sale (purchasing at a price below current value); (2) exercise an option to purchase land under a lease provision (at an option price below current value); (3) exercise an option to extend the terms of a lease (in order to sublease at a higher rental); and (4) continue

in a joint prospecting venture operating by applying to the state government for favorable mineral leases (which are usually though not necessarily granted to those holding existing leases).[1]

California follows this liberal, remedial doctrine that dissolved corporations may realize upon their assets through the making of purchases. See *Trubowitch* v. *Riverbank Canning Co.*, 30 Cal. (2d) 335, 182 P. (2d) 182 (1947).

Accordingly, in 1947 the California Superior Court issued two decrees holding that petitioner corporation, being a California dissolved corporation, had the authority, in so far as the California law is concerned, to realize upon a former owner right as an asset—assuming that it was an asset in fact, *i. e.* that the former owner's option was to repurchase for less than current market value (See R. 18, R. 24).

These decrees were issued upon a petition filed by the corporation under section 403 of the California Civil Code—comparable to a trustee's request for instructions.[2] The rulings were sought by petitioner pursuant to advice of the War Assets Administration that satisfactory evidence was required as to the authority of a dissolved corporation under state law to exercise its repurchase right (R. 7-8,

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[1] The applicable citations are:

(1) *Big Sespe Oil Co.* v. *Cochran*, 276 Fed. 216 (C.C.A. 9) (1921); (interpreting the California law); *Lyman* v. *Smith*, 137 Fla. 310, 188 So. 337 (1939); *Bruun* v. *Cook*, 280 Mich. 484, 273 N. W. 774 (1937); *Willard* v. *Kimball*, 277 Mass. 350, 178 N. E. 607 (1931).

(2) *Conn* v. *Manchester Amusement Co.*, 79 N. H. 450, 111 Atl. 339 (1920); *Nardis Sportswear Co.* v. *Simmons*, 218 S. W. (2d) 451 (Tex. Sup. Ct. 1949).

(3) *Kay Furniture Co.* v. *Rovin*, 312 Mich., 290, 20 N. W. 2d 194 (1945).

(4) *Wyoming-Indiana Oil & Gas Co.* v. *H. R. Weston*, 43 Wyo. 526, 7 Pac. 2d 206 (1932).

[2] A California corporation in the process of dissolution is considered in the position of a trustee. Cf. *Big Sespe Oil Co.* v. *Cochran*, 276 Fed. 216, 223 (C.C.A. 9th).

par. (d) ff). Respondent officials could not be required to appear in the State court and they ignored petitioner's suggestion that all parties appear before the State court (R. 43, Exh. I, 2d par.). The Superior Court's judgments are properly given effect as a determination of the effect of Section 399 even though respondents were not parties. *Blair* v. *Commissioner*, 300 U. S. 5, 10. Moreover, as already noted, the decrees of the Superior Court are clearly correct under California's continued existence statute, Civil Code, Section 399.[3]

So far as California law is concerned, it is plain that petitioner has the capacity to exercise the repurchase rights under Section 23. It is likewise plain under the Federal statute that a former owner need not be a "going concern" provided it has the capacity to purchase the asset. The former owner is the only priority claimant under Section 23 who is not required to keep the property and who may sell the same immediately without restrictions.[4] In passing

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[3] The court below, while rejecting petitioner's contention as to the effect to be given to California law, cited, as adding "further strength . . . to our view" (R. 56), the cases of *Boyle* v. *Lakeview Creamery Co.*, 9 Cal. (2d) 16, 68 P. (2d) 968, 970 (1937); *Fidelity Metals Corp.* v. *Rizley*, 77 Cal. App. (2d) 289, 175 P. (2d) 592, 595 (1946). Those cases involved special statutes, of California and Nevada, of forfeiture of charter for failure to pay taxes, and in both cases the court stated that wider powers would be available to a dissolved corporation invoking the general provisions of Sec. 399 of the California Civil Code.

[4] Sec. 8305.20(b), War Assets Administration Regulation 5, 12 Fed. Reg. 2034: *"Conditions in disposal instrument.* Unless otherwise authorized by the Administration, as a part of each disposal pursuant to this part, any priority claimant, . . . shall certify in writing that he is acquiring the property for the uses and purposes set forth in his proposal and (1) if a purchaser, that he is not acquiring it for the purpose of reselling it and in no case will he resell it within three (3) years without first obtaining the written authorization of the Administration; * * * *Provided, however, that no restriction as to resale shall be imposed upon a conveyance to a former owner,* or the tenant of a former owner, acquiring surplus section 23 real property through an exercise of his priority." (Emphasis added.)

Section 23 (d), Congress rejected the Government's view that a former owner had already been treated with complete justice by receiving the value at the time of acquisition. The legislators insisted that, as a matter of fairness, where the Government in war-time seized the fee, rather than a leasehold, and now proposed to sell the real property, any increase in the value of the property should inure not to the advantage of the strong-armed Government but rather to the benefit of the former owner.[5] A dissolved corporation can realize on that value though no longer continuing in business.

Congress avoided any rule which would limit the application of the statute to large corporations—like the Chesapeake and Ohio Railway Corp. which of course continued in business and reacquired its Greenbrier Hotel—and would discriminate against a small single-asset corporation which would naturally tend, after condemnation of its sole asset, either to enter a new enterprise or dissolve. The statutory right is in no way linked to a former owner proposing to reestablish his business. A former owner is definitely given the option to repurchase even though the land is no longer suitable for the same purpose as when acquired by the Government. Sec. 23 (d) (1) (B). Indeed, Congress specifically passed the former owner provision so that it would apply to "Moore Field." In that case after agricultural land was converted by the Navy into an air field, oil was discovered nearby. Congress assured repurchase by the former owners, though the land was no longer suitable for farming due to the gravel runways.[6]

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[5] "Surplus Property Act of 1944" Hearings before the House Committee on Expenditures in the Executive Departments, 78th Cong., 2d Sess., on H.R. 5125 (Aug. 7, 8, 9, 1944). (See particularly statements of Congressmen Gossett and Wolverton, pp. 54-55).

[6] See 90 Cong. Rec. 7267-7628; 90 Cong. Rec. 7935.

The court below likewise totally ignores and disregards the State law when it states that petitioner is not "and never was" the person from whom the hotel was acquired by the Government (R. 6). This case does not involve any "successor" corporation. Petitioner is, on the contrary, the very corporation whose hotel was taken in condemnation proceedings, notwithstanding the changes in name, business and shareholders. California applies the general doctrine of corporate entity, that a corporation is considered a separate entity from its stockholders (remaining unchanged in its identity by changes in its stockholders). *Estate of Traung,* 30 Cal. (2d) 801. California recognizes the doctrine of separate corporate entity save in exceptional circumstances, not present here, where that would promote a wrong, accomplish an illegal act or perpetrate a fraud. *Wood Estate* v. *Chanslor,* 209 Cal. 241, 286 Pac. 1001; *Midwest Air Filters Pacific* v. *Finn,* 201 Cal. 587, 258 Pac. 382; *Dos Pueblos Ranch and Impl. Co.* v. *Ellis,* 8 Cal. 2d 617, 67 P. (2d) 340. In fact recovery by petitioner corporation will inure to the advantage of both the former and the present shareholders, pursuant to their agreement (R. 44). But quite apart from that agreement petitioner's identity and status under California law was in no way affected by the transfer of its stock.

California likewise follows the general doctrines of corporation law, which provide that a corporation's identity is not affected by charter amendments effecting a change of name or place of business (*Mutual B. & L. Assn.* v. *Corwin,* 220 Cal. 282, 30 P. (2d) 509, 514; Calif. Civil Code Sec. 362; *Corpus Juris Secundum,* Vol. 17, Sec. 171; Vol. 18, Sec. 177), or by the fact that it sells its assets, and after withdrawal of all stockholders who so desire, amends its charter, changes its name and proceeds into new enterprises. *Estate of*

Traung, 30 Cal. (2d) 811, 814, 185 P. (2d) 801; *Loney* v. *Consolidated Water Co.,* 122 Cal. App. 350, 9 P. (2d) 888; 19 *Corpus Juris Secundum,* Sec. 1668; *Levin* v. *Pittsburgh United Corp.,* 330 Pa. 457, 199 Atl. 332.

The court below erred in purporting to find a change of identity of this California entity without consideration of, and in contravention of, the California corporation law, and also, indeed, of generally prevailing doctrines of corporation law.

There is a subsidiary issue in this case, whether the right of a former owner under Sec. 23 (d) extends to real property such as hotels, under the act as passed in 1944, as decided by the District Judge (R. 47), or solely under the act as amended in 1946, as held by the court below.

Petitioner submits that Section 23 as passed in 1944 extended to hotels. The administrative agency ruled in March, 1946, that "real property" as defined in Section 23 (a) of the 1944 act excluded all commercial properties. That ruling reversed the previous assumption of the administrative officials.[7] The administrative regulation that all commercial property was excluded from Section 23 made nonsense out of Section 23(f) of the 1944 Act providing a veterans preference for "real property . . . suitable for . . . small business purposes." Section 23 (a) was defined by Congress to exclude industrial plants and "similar structures" to take care of the administrative objections that no former owner priority is practicable in the case of large installations which have been built up by the Government—particularly since such installations, which must

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[7] The files of the disposal agencies show examples of administrative actions based upon an assumption that Sec. 23(a) applied to commercial properties—Wilmington Commissary Bldg. (Calif.); Chilkoot Barracks (Alaska); Gold Hill Arsenic Project (Utah).

obviously be sold as a single economic unit, were often derived from lands taken from many different owners.[8]

But the 1944 Act's definition of "real property" plainly embraced commercial properties, such as hotels, being sold in substantially the same parcels and substantially the same structures as when taken. The 1946 amendment making that plain was passed by Congress just as soon as it learned of the 1946 administrative interpretation.[9] Both the House and Senate Committees expressly called it "clarifying legislation". H. R. Rep. No. 2337, p. 2; S. Rep. No. 1722, p. 1, 79th Cong. 2d Sess. The administrative interpretation was termed "wholly unjustified." H. R. Rep. No. 2337, p. 2. A clarifying amendment redefining a term evidences no change in legislative intent. *Thomson* v. *United States,* 321 U. S. 19, 23; *Minnesota* v. *Keeley,* 126 F. (2d) 863, 866 (C. C. A. 8th).

But in any event the California Superior Court correctly held Sec. 399 of the California Civil Code to provide capacity in petitioner to realize on this asset whether based solely on the 1944 Act or upon that act as amended in 1946 (R. 24-5). Under sec. 399 the claim may mature after dissolution of the corporation; ~~the California dissolved corporations,~~ the California dissolved corporation may realize

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[8] See "Disposition of Surplus Real Property", Hearings before the Subcommittee of the House Committee on Public Buildings and Grounds, 78th Cong., 2d Sess., on H. R. 3140, 2377, 2958, 2971, 2112 and 2487 (Nov. 1943 et seq.)—particularly statements of Secretary Stimson, pp. 3, 15, 24; Justice Dept. (p. 120); Navy Dept. p. 314 and statement of Chairman Manasco, p. 35; National Housing Agency, p. 35. See also "Surplus Property Act of 1944," Hearings before the House Committee on Expenditures in the Executive Departments, 78th Cong., 2d Sess. on H.R. 5125 (Aug. 1944), at pp. 48-49.

[9] The War Assets Corporation issued its regulation March 5, 1946. Three bills were introduced in Congress in June 1946; the House Committee reported favorably on June 25 within a fortnight, after a Senate Report, and a Conference, Congress passed the Act of August 7, 1946.

upon the asset when it matures. See *Trubowitch* v. *Riverbank Canning Co.*, 30 Cal. (2d) 335, 182 P. (2d) 182, and its approval of *Stentor Elec. Mfg. Co.* v. *Klaxon Co.*, 115 F. (2d) 268 (C. C. A. 3d), permitting suit upon a claim which matured subsequent to plaintiff's dissolution. As of the date of its dissolution in 1945, petitioner corporation had a claim based upon the 1944 law, a claim upon the Government officials to include commercial properties within section 23(a) in accordance with their practice prior to the March 1946 ruling, and a substantial expectancy that the legislature would intercede to protect the claim if necessary, as it did.

Claims are "property, though of uncertain value . . . although the validity of such claims may be denied, and their value may depend upon the uncertainties of litigation, or the doubtful result of an appeal to the legislature." *Erwin* v. *United States*, 97 U. S. 392, 395. This Court has specifically stated the "inchoate right" of a sugar producer to receive a bounty under proposed legislation pending in Congress to be an existing "asset." *Allen* v. *Smith*, 173 U. S. 389.

The California Superior Court correctly applied Sec. 399 of the California Civil Code, and held that petitioner has capacity, so far as California law is concerned, to realize upon a former owner asset as based upon the 1944 act alone, and in the alternative as based upon that act as amended in 1946. The District Court, in considering the applicability of this Federal statute to dissolved corporations, correctly followed the California law and decrees and gave judgment, also on alternative grounds, in favor of petitioner. The court below, disregarding the California law and decrees, reversed the judgment of the District Court. Its ruling is

erroneous, and conflicts in principle with decisions of this Court and the Court of Claims. The question presented, involving the effect to be given by Federal courts under Federal statutes to State law and decrees, is one of importance under our Federal system.

Conclusion

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HAROLD LEVENTHAL,
Washington, D. C.
DAVID B. GIDEON,
San Francisco, California.
JOHN J. COURTNEY,
Washington, D. C.

October, 1949.

APPENDIX

Statutes and Regulations Involved

Section 399 of the California Civil Code reads as follows:

> 399. Continuation of corporation after dissolution. A corporation which is dissolved by the expiration of its terms of existence, by forfeiture of existence by order of court, or otherwise, nevertheless shall continue to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not for the purpose of continuing business except in so far as necessary for the winding up thereof. No action or proceeding to which a corporation is a party shall abate by the dissolution of such corporation or by reason of proceedings for dissolution and winding up thereof.
>
> Any assets inadvertently or otherwise omitted from the winding up shall continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation, and on realization shall be distributed accordingly.

The relevant provisions of the Surplus Property Act of 1944, 58 Stat. 765, 50 U. S. C. War App. sec. 1611 et seq. are as follows:

> Sec. 3. As used in this Act—
>
> • • • • • • •
>
> (h) The term "person" means any individual, corporation, partnership, firm, association, trust, estate, or other entity.
>
> Sec. 23(a). As used in this section—
>
> (1) The term "real property" means property consisting of land, together with any fixtures and improvements thereon, located outside of the District of Columbia, but does not include war housing, industrial

plants, factories, or similar structures and facilities, or the sites thereof, or land which the Board determines is essential to the use of any of the foregoing; and

(2) The term "surplus real property" means real property which has been determined under section 11 to be surplus property.

(d)(1)(A) In the case of any surplus real property which was acquired by any Government agency after December 31, 1939, the person from whom such property was acquired shall be given notice, in such manner (which may include publication) as the Board by regulation may prescribe, that the property is to be disposed of by the United States and shall be entitled to purchase such property, in substantially the identical tract as when acquired from such person, at private sale at any time during the period of ninety days following such notice * * *.

* * * * * * *

(3) The price to be paid for surplus real property sold under this subsection shall be a price not greater than that for which it was acquired by the United States, such acquisition price being properly adjusted to reflect any increase or decrease in the value of such property resulting from action by the United States, or a price equal to the market price at the time of sale of such property, whichever price is the lower.

War Assets Corporation Regulation of March 6, 1946, Vol. 11, F. R., p. 2644, and War Assets Administrator's Regulation of June 29, 1946, Vol. 11, F. R., pp. 7611, 7612, provided as follows:

8305.2(11). "Section 23 real property" means property consisting of land, together with any fixtures and improvements thereon, located outside of the District of Columbia, but does not include war housing, industrial plants, factories, or similar structures and

facilities, or the sites thereof, or land which the Administrator determines is essential to the use of any of the foregoing. "Similar structures and facilities" as used above shall include structures and facilities classified by the Administrator as (1) commercial * * *.

Section 1 of the Act of August 7, 1946, 60 Stat. 886, 50 U. S. C. War App., sec. 1632, provides:

That section 23(a)(1) of the Surplus Property Act of 1944 is amended to read as follows:

"(1) The term "real property" means property consisting of land, together with any fixtures and improvements thereon (including hotels, apartment houses, hospitals, office buildings, stores, and other commercial structures) located outside the District of Columbia, but does not include (A) commercial structures constructed by, at the direction of, or on behalf of any Government agency, (B) commercial structures which the Administrator determines have been made an integral part of a functional or economic unit which should be disposed of as a whole, and (C) war housing industrial plants, factories, airports, airport facilities, or similar structures and facilities, or the sites thereof, or land which the Administrator determines essential to the use of any of the foregoing; * * *."

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 392

CHARLES L. HARNEY CONSTRUCTION COMPANY (Formerly Palm Springs Holding Corporation), PETITIONER

v.

MAJOR GENERAL PHILIP B. FLEMING, INDIVIDUALLY AND AS ADMINISTRATOR, FEDERAL WORKS AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The district court did not write an opinion. The opinion of the court of appeals (R. 49-56) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 1949 (R. 57). The petition for

a writ of certiorari was filed on October 14, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether Section 23 of the Surplus Property Act of 1944, as originally enacted and as amended, providing a preferential repurchase right in the former owner of surplus real property, confers such right on a dissolved corporation.

2. Whether, under the facts, petitioner is "the person from whom such property was acquired," within the meaning of those words in Section 23 of the Surplus Property Act of 1944 as originally enacted and as amended, and consequently has a preferential repurchase right as a former owner under that section.

3. Whether Section 23 of the Surplus Property Act of 1944 applied to hotels prior to its amendment in 1946.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Surplus Property Act of 1944, 58 Stat. 765, 50 U. S. C. App. 1611, *et seq.*, the amendatory Act of August 7, 1946, 60 Stat. 886, 50 U. S. C. App. 1632, War Assets Corporation Regulation of March 6, 1946, 11 F. R. 2644, reissued as War Assets Administration Regulation of June 29, 1946, 11 F. R. 7611, 7612, and Section 399 of the California Civil Code are set out in the Appendix, *infra,* pp. 16-20.

STATEMENT

On February 9, 1948, petitioner filed a complaint against the federal officials charged with disposal of surplus property to secure a judgment declaring that petitioner had a preferential right to repurchase the Hotel El Mirador in California (R. 2-12). Upon facts appearing in an affidavit executed by respondent Philip B. Fleming (R. 25-44) and an affidavit of John J. Courtney filed by the petitioner (R. 44-46), the trial court concluded that there was no genuine issue of fact and that petitioner was entitled to summary judgment declaring it to be in possession of the repurchase right of a former owner under Section 23 of the Surplus Property Act, both as originally enacted and as amended (R. 47-48).

The undisputed facts may be summarized as follows:[1]

By condemnation proceedings, the United States, on June 22, 1942, acquired title to certain real property in California consisting of 28 acres of land on which stood the El Mirador Hotel, for an agreed value of $425,000.00. The owner of the hotel at the time it was acquired by the United States was the Palm Springs Holding Corporation, a California corporation. On September 2, 1942, the Board of Directors of that corporation adopted a resolution authorizing the sale of all assets of the

[1] The case being disposed of on a motion for summary judgment, the district court did not enter findings of fact and conclusions of law (Rule 52(a), F.R.C.P.).

corporation, except cash on hand, to its two principal stockholders, Warren B. Pinney and Ralph D. Lacoe, Jr., for the sum of $750.00. This was accomplished by a bill of sale executed on September 15, 1942. Thereafter, the only asset of the corporation, after the purchase of some of its own capital stock, consisted of cash on hand in the sum of approximately $235,000.00. (R. 27-28.)

Sometime prior to October 1, 1942, Pinney and Lacoe acquired control of all outstanding stock of the Palm Springs Holding Corporation, and, on that date, they transferred all of the stock of the corporation to Charles L. Harney, P. E. Harney, Henry F. Wrigley, and C. J. Carroll (R. 28). These four individuals had been engaged in the general contracting business in San Francisco, California. They wished to continue the construction business under the corporate form, but did not want to take the time that formation of a new corporation would require. There was also an advantage to them for tax purposes in acquiring the skeleton of a corporation with an equity invested capital of approximately $600,000.00 and a possible capital loss on the sale of its assets of approximately $148,000.00. The Harneys and their associates paid $260,000 for the stock of the corporation, the only asset of which was approximately $235,000.00 in cash. (R. 28.)

On October 2, 1942, the day following the acquisition of the stock by the Harneys, the new owners called a directors' meeting, elected new officers,

and passed a resolution amending the Articles of Incorporation by (a) changing the name of the corporation to the Charles L. Harney Construction Company, (b) eliminating the provisions for carrying on a hotel business, substituting therefor authority to carry on a general contracting business, and (c) changing the principal office of the corporation from Los Angeles to San Francisco. Thereafter the Charles L. Harney Construction Company carried on a general contracting business but did not engage in any way in the hotel business. On November 2, 1944, the Charles L. Harney Construction Company filed a certificate of election to dissolve with the Secretary of State of the State of California, and the company was dissolved pursuant to a certificate of dissolution dated June 28, 1945, and filed with the Secretary of State on August 4, 1945. (R. 28-29.)

The former El Mirador Hotel was declared surplus in February 1946, under the Surplus Property Act of 1944, 58 Stat. 765, Section 11, 50 U. S. C. App. 1620. On March 4, 1946, the property was classified by the War Assets Corporation as "commercial tract, improved." By regulations of the War Assets Corporation (11 F. R. 2644) and of the War Assets Administrator (11 F. R. 7611), the classification of the property as "commercial tract, improved" eliminated it from the definition of "section 23 real property" as used in the Surplus Property Act of 1944, and, consequently, the property

under those regulations was not subject to a former owner's priority under that Act (R. 29).

Pursuant to Section 10 of the Surplus Property Act of 1944, the property was assigned to the Federal Works Agency on March 15, 1946, for disposition. The property was advertised and bids were received which included (1) a bid in the sum of $700,000.00, the adjusted purchase price for former owners, received from the petitioner, Charles L. Harney Construction Company; (2) another bid in the sum of $700,000.00 received from Warren B. Pinney and Ralph D. Lacoe, Jr., also claiming to be former owners; (3) a bid in the sum of $1,150,000.00 under a veteran's priority by Irwin Frank and Lloyd W. Gardner, and (4) ten non-priority bids in the sum of $1,050,000.00 or less (R. 29-30).

When petitioner raised the question of its right as a former owner of the property, respondent Fleming determined administratively that petitioner was not a priority former owner within the meaning of Section 23 of the Surplus Property Act of 1944, as amended by the Act of August 7, 1946, 60 Stat. 886, attaching to his letter so stating a copy of an opinion by the General Counsel of the Federal Works Agency (R. 35-43). In seeking a ruling on its rights, petitioner had relied upon (1) a letter of the Secretary of State of California, dated June 2, 1947, expressing the view that the Surplus Property Act of 1944 conferred a repurchase right upon petitioner which constituted an

asset within the meaning of Section 399 of the California Civil Code which petitioner corporation is empowered by state law to pursue, notwithstanding its dissolution (R. 13-14), and (2) an order of the Superior Court of the State of California in and for the City and County of San Francisco, California, dated June 3, 1947, procured by petitioner in *ex parte* proceedings, authorizing petitioner to submit a claim as former owner and to purchase the property at the adjusted price and to borrow the necessary money from its shareholders (R. 18-20). Following rejection of its claim, petitioner obtained a further order of said court dated September 5, 1947, also in *ex parte* proceedings, declaring that the right of a former owner, whether under the Surplus Property Act of 1944 as originally enacted, or as amended in 1946, is an asset of petitioner corporation omitted in the winding-up process, within the meaning of Section 399 of the California Civil Code, and authorizing the filing of an offer, petition, complaint or other proceeding to realize upon the asserted asset (R. 24-25). By letter of February 2, 1948, respondent Fleming adhered to his previous ruling and this action was thereupon instituted (see R. 9).

Finally, the affidavit of John J. Courtney, filed by petitioner (R. 44-45), recites that agreements had been concluded on and after July 28, 1947, between those who held stock in the Palm Springs Holding Corporation as of June 22, 1942, and the shareholders of petitioner Harney Construction

Company, whereby it was agreed that petitioner would represent the legal and equitable rights of both the former shareholders of Palm Springs Hotel Corporation and the subsequent shareholders of petitioner Harney Construction Company, and that "both groups of stockholders would share in the benefits" derived from the exercise of the former owner right.

On these facts, the district court held that petitioner was in possession of the repurchase right of a former owner (R. 47-48). The court of appeals reversed the judgment and remanded the case with directions to enter judgment for respondents. In so doing, the court of appeals held that the Surplus Property Act of 1944, as amended, conferred no former-owner repurchase right on corporations dissolved prior to the time property is declared surplus, that petitioner is not the former owner of the property within the meaning of the statute, and that the Act, as originally enacted, did not apply to hotel property (R. 49-56).

ARGUMENT

1. This case does not present any question of long-range importance since all priorities provided by the Surplus Property Act expire on December 31, 1949. Act of June 30, 1949, sec. 502(a)(1), Pub. No. 152, 81st Cong. 1st sess. Nor does it, as petitioner asserts (Pet. 8), present any question of the weight and effect to be accorded state law and state court rulings "on the capacity of a dissolved

corporation of that State." The court below conceded (R. 56) that under California law petitioner has a limited technical existence, even after dissolution, to prosecute claims to realize upon assets which it had at the time of its dissolution, even though they do not become collectible until sometime after dissolution. And it conceded that petitioner has capacity to prosecute its claim to a former-owner priority right and realize upon that claim if the right exists.

But there is a manifest distinction between the question of capacity to exercise a right and the question whether the right exists. Here petitioner claims a right to purchase United States property. Clearly no such right can arise under state law. Petitioner necessarily claims the right under federal law, the Surplus Property Act. In deciding that the right does not exist in petitioner, the court of appeals did not decide that petitioner lacks capacity to make the claim, but decided only the purely federal question, whether the Surplus Property Act confers the right on a party in petitioner's status. Petitioner's assertion of a conflict "in principle" (Pet. 9) is therefore baseless.

2. The court of appeals correctly held (R. 56) that the Surplus Property Act does not confer the right to repurchase upon a dissolved corporation. Clearly no right to repurchase accrued under the statute here involved until the property was declared surplus in 1946. Prior to that time, there

was only a possibility that the right might come into being. In 1946 petitioner was already dissolved (R. 29). As a general proposition, statutes conferring rights on corporations would not be construed as applicable to dissolved corporations, absent express language to that effect. At common law "and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution can not be distinguished from the death of a natural person." *Oklahoma Gas Co.* v. *Oklahoma,* 273 U. S. 257, 259. See also *Defense Supplies Corp.* v. *Lawrence,* 336 U. S. 631, 634. Moreover, we are here dealing with a statute which confers a gratuity on former owners at a sacrifice of the public interest. Thus, in this case, the adjusted price to a former owner is $700,000.00, but the Government has nonpriority bids as high as $1,150,000.00 (R. 30). Such statutes are subject to strict construction, and one claiming to be a beneficiary has the burden of establishing his right beyond doubt. *Northern Pacific R. Co.* v. *United States,* 330 U. S. 248, 257.

It is submitted that only express language in the statute would justify a holding that Congress intended that a defunct corporation could be exhumed for the sole purpose of allowing its former stockholders to make a profit of $450,000.00 at the taxpayers' expense. Not only can petitioner point to no such language but, as the court of appeals pointed out (R. 55), the statute expressly deals with the contingency of former owners passing

out of existence prior to the time property is declared surplus, and did so in terms which exclude dissolved corporations. Section 23(g) (Appendix, *infra,* p. 17) provides for survival of the right to the "spouse and children" of a former owner, clearly limiting survival to the case of deceased *individual* former owners and even there only to certain heirs. It is not the province of the courts to extend the right further than Congress has seen fit to go.

Petitioner in effect recognizes that dissolved corporations are not within the statute by its heavy reliance on Section 399 of the California Civil Code. But that statute does not aid petitioner. It provides (Appendix, *infra,* p. 19) in general terms for a limited technical existence for the sole purpose of winding up its affairs, collection of assets and payment of debts. It is the counterpart of probate laws for winding up an individual decedent's estate. And the statute no more indicates corporate life in petitioner than do probate statutes indicate life in a decedent.

3. But even if the former owner right of the Surplus Property Act be thought to extend to dissolved corporations, under the undisputed facts the court of appeals correctly decided (R. 54) that petitioner is not, in any event, the former owner of the property involved. Section 23(d) (1) (A) of the Surplus Property Act (Appendix, *infra,* p. 17) gives the former owner right to "the person from

which such property was acquired." The object of Congress was to favor those "unwilling owners" from whom the Government had to take property for war purposes. (H. Rept. No. 1757, 78th Cong. 2d sess., p. 12). Petitioner in no sense qualifies. To allow petitioner's claim would simply give a windfall of $450,000.00 to individuals from whom the Government took nothing and who have no claim, moral or otherwise, upon the United States.

On October 1, 1942, Charles L. Harney and P. E. Harney purchased all of the stock of Palm Springs Holding Corporation, from which corporation the Government had previously acquired the property in question.[2] At that time, the only asset of Palm Springs Holding Corporation was $235,000.00 in cash, and the Harneys paid $260,000.00. Simple subtraction shows that the transaction constituted a purchase of a corporate front and nothing else for $25,000.00. It was entered into to avoid the delay which formation of a new company would entail. At the time the Harneys acquired the stock, the hotel property was already owned by the Government. The right they now claim was not in prospect in 1942 and they paid nothing on that account. The complete lack of identity between petitioner and Palm Springs Holding Corporation is further shown by the fact that the Harneys immediately changed the name of the corporation, amended its charter by eliminating the provision for doing a hotel business and substituting therefor

[2] Only qualifying shares went to Henry F. Wrigley and C. J. Carroll, the Harneys' associates (R. 28).

a provision for the carrying on of their general contracting business, and changing the principal office from Los Angeles to San Francisco.

It follows that the Harneys have no just claim to the benefit of the statute. Refuge in the technicalities of corporate entity (Pet. 15) cannot confer on individuals having not the slightest claim against the Government a windfall of $450,000.00 to the detriment of the Government.[3]

4. In sustaining the administrative construction of Section 23 of the Surplus Property Act of 1944, as originally enacted, as not applying to commercial properties, the court of appeals had before it the legislative history of that statute showing the purpose of Congress to limit the former owner right to former owners of farm property acquired by the Government. The question of the scope of the 1944 Act is described by petition (Pet. 16) as "subsidiary". It actually is of little or no importance here or generally. The statute was amended in 1946 specifically to include hotel property. And if, as held by the court of appeals, petitioner's being dissolved prior to the

---

[3] Petitioner refers (Pet. 15) to an agreement between the Harneys and former shareholders of Palm Springs Holding Corporation to share benefits. This is irrelevant. The former stockholders of Palm Springs Holding Corporation clearly have no right as against the United States. And if, as the court of appeals held, petitioner has no right, such right cannot be established simply by agreement to share proceeds. Additionally, neither the former stockholders nor petitioner, if either had a right, could assign any part of it to the other. (Sec. 23(g), Surplus Property Act of 1944, Appendix, *infra*, pp. 17-18.)

time the property was declared surplus, and petitioner's lack of identity with the former owner preclude it from being a former owner within the purview of the statute, these grounds for denial of petitioner's claim are unaffected by the question of whether such property was included in the law in 1944 or in 1946. If on the other hand, petitioner is a former owner and its dissolution is deemed irrelevant, its rights are complete under the 1946 Act and reference to the 1944 Act becomes unnecessary. Only if the date of petitioner's dissolution became crucial might the meaning of the 1944 Act conceivably assume some significance. That possibility is so remote here and so unlikely to arise in other cases that certiorari would seem to be plainly unwarranted. For reasons already stated, *supra,* pp. 8-9, 11, petitioner's discussion of Section 399 of the California Civil Code in this connection (Pet. 17) is unavailing, as is its reference to the *ex parte* rulings of the state court.[4]

[4] The state court's rulings (R. 18-20, 24-25) may be accepted as determining petitioner's capacity to prosecute its claim; those rulings (R. 18-20, 24-25), correctly appraised, go no further. Obviously, the state court could not determine the question of petitioner's right under federal law in *ex parte* proceedings.

CONCLUSION

The decision below is correct, there is no conflict, and the case does not warrant further review. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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Solicitor General.
A. DEVITT VANECH,
Assistant Attorney General.
ROGER P. MARQUIS,
FRED W. SMITH,
Attorneys.

NOVEMBER 1949

APPENDIX

The pertinent portions of the Surplus Property Act of 1944, 58 Stat. 765, 50 U. S. C. App. 1611, *et seq.*, read as follows:

> Sec. 2. The Congress hereby declares that the objectives of this Act are to facilitate and regulate the orderly disposal of surplus property so as—
>
> * * * * *
>
> (q) to prevent insofar as possible unusual and excessive profits being made out of surplus property;
>
> * * * * *
>
> (t) except as otherwise provided, to obtain for the Government, as nearly as possible, the fair value of surplus property upon its disposition.
>
> Sec. 3. As used in this Act—
>
> * * * * *
>
> (h) The term "person" means any individual, corporation, partnership, firm, association, trust, estate, or other entity.
>
> Sec. 23 (a), as used in this section—
>
> (1) The term "real property" means property consisting of land, together with any fixtures and improvements thereon, located outside of the District of Columbia, but does not include war housing, industrial plants, factories, or similar structures and facilities, or

the sites thereof, or land which the Board determines is essential to the use of any of the foregoing; and

(2) The term "surplus real property" means real property which has been determined under section 11 to be surplus property.

* * * * *

(d) (1) (A) In the case of any surplus real property which was acquired by any Government agency after December 31, 1939, the person from whom such property was acquired shall be given notice, in such manner (which may include publication) as the Board by regulation may prescribe, that the property is to be disposed of by the United States and shall be entitled to purchase such property, in substantially the identical tract as when acquired from such person, at private sale at any time during the period of ninety days following such notice * * *.

(B) * * *

* * * * *

(3) The price to be paid for surplus real property sold under this subsection shall be a price not greater than that for which it was acquired by the United States, such acquisition price being properly adjusted to reflect any increase or decrease in the value of such property resulting from action by the United States, or a price equal to the market

price at the time of the sale of such property, whichever price is the lower.

* * * * *

(g) In the case of the death of a person entitled under this section to rights as a former owner or veteran, his spouse and children, in that order, shall succeed to such rights of the decedent existing at the time of his death. * * * No preference right may be assigned or exercised by power of attorney or through a power to select except as may be permitted by regulations prescribed by the Board in order to prevent the loss of such right by the holder thereof.

War Assets Corporation Regulation of March 6, 1946, 11 F. R. p. 2644, issued under the authority of the Surplus Property Act of 1944, and War Assets Administration Regulation of June 29, 1946, 11 F. R. 7611, issued under the same authority, each provided as follows:

§ 8305.2(11). "Section 23 real property" means property consisting of land, together with any fixtures and improvements thereon, located outside of the District of Columbia, but does not include war housing, industrial plants, factories, or similar structures and facilities, or the sites thereof, or land which the Administrator determines is essential to the use of any of the foregoing. "Similar structures and facilities" as used above shall include structures and facilities classified by the Administrator as (1) commercial * * *.

Section 1 of the Act of August 7, 1946, 60 Stat. 886, 50 U. S. C. App. 1632, provides:

> That section 23 (a) (1) of the Surplus Property Act of 1944 is amended to read as follows:
>
> "(1) The term 'real property' means property consisting of land, together with any fixtures and improvements thereon (including hotels, apartment houses, hospitals, office buildings, stores, and other commercial structures) located outside the District of Columbia, but does not include (A) commercial structures constructed by, at the direction of, or on behalf of any Government agency, (B) commercial structures which the Administrator determines have been made an integral part of a functional or economic unit which should be disposed of as a whole, and (C) war housing, industrial plants, factories, airports, airport facilities, or similar structures and facilities, or the sites thereof, or land which the Administrator determines essential to the use of any of the foregoing; * * *".

Section 399 of the California Civil Code reads as follows:

> § 399. *Continuation of corporation after dissolution.* A corporation which is dissolved by the expiration of its term of existence, by forfeiture of existence by order of court, or otherwise, nevertheless shall continue to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and

collect and divide its assets, but not for the purpose of continuing business except in so far as necessary for the winding up thereof. No action or proceeding to which a corporation is a party shall abate by the dissolution of such corporation or by reason of proceedings for dissolution and winding up thereof.

Any assets inadvertently or otherwise omitted from the winding up shall continue in the dissolved corporation for the benefit of the person entitled thereto upon dissolution of the corporation, and on realization shall be distributed accordingly.

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